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Chair

Mr. Dan Ruimy

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● (1530)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody. What a gorgeous day it is.

Do I hear a cellphone? Are all cellphones off? Thank you.

Welcome to meeting 117 of the Standing Committee on Industry, Science and Technology, as we continue our legislative five-year review of copyright.

Today we have with us, from the Canadian Teachers' Federation, Mr. Mark Ramsankar, President; from the Canadian School Boards Association, Cynthia Andrew, Policy Analyst; and from the University of Calgary, Dru Marshall, Provost and Vice-President, who we'll save for last.

We're going to start with you, Mr. Ramsankar. You have up to seven minutes.

Mr. H. Mark Ramsankar (President, Canadian Teachers' Federation): Thank you, Chair.

My name is Mark Ramsankar. I'm the President of the Canadian Teachers' Federation, but first and foremost, I'd like to suggest that I'm a schoolteacher. I've had the opportunity throughout my career to teach all grades and to also work as a consultant with the school board in Edmonton. I've been a special ed teacher as well as an administrator, so I'm speaking from the perspective of the entire K-to-12 education system over my 25 years in the classroom.

As the national voice for Canadian teachers, I represent here today a quarter of a million teachers in the K-to-12 system in every province and territory in the country. We have a part in and strong connection to Education International, which represents over 30 million teachers across the world. We are a long-standing member of the education coalition of national education organizations. We advocate for the rights of teachers and students in the federal government's copyright reform process. We work very closely with the education coalition partners to develop education materials for teachers on matters relating directly to copyright.

We believe very firmly in protecting the legitimate interests of creators and publishers by ensuring there is no copyright infringement when teachers are copying materials for use in their classrooms and for students. We also believe that the current fair dealing provisions maintain a very strong balance between user rights and creator rights. We view this as very strong public policy. Even our global organization, through Education International, holds that the Canadian Copyright Act as it stands is held in very high regard.

Teachers are professionals who respect copyright, and we also teach our students to respect copyright when they do research. Teachers will not copy materials if there is any doubt. They do not copy whole textbooks. It infuriates us throughout the profession when somebody says something such as this, that there is a teacher who is blatantly stepping on copyright rules.

Over the last decade there's been a dramatic shift from print-based materials and resources such as textbooks to digital resources. In our classrooms today, as challenging as they are, teachers find effective ways to teach through these evolving technologies. They are creating their own resources and materials. They're using collaborative approaches to content in creation and are engaging students so that they can learn through online resources as well as more traditional print material. As professionals in the K-to-12 system, teachers want their students to have access to the very best educational content available.

Speaking directly to copyright, it is an important issue, and it's a subject that has been raised with teachers by the Canadian Teachers' Federation. We speak about compliance, and we take part in the awareness of consequences to infringing on copyright. We also engage in a comprehensive awareness program in our efforts to ensure teachers are aware of copyright and the limits of the law when they are preparing for their classes.

Teachers are professionals. Anecdotal stories of whole textbooks being copied are isolated incidents. I speak directly for the K-to-12 system in education, and that is public education. I don't stand here to represent extended or private education. For the CTF, it's not about the money. From our view, it's about students. It's about providing the best for their learning experience in our system and for their futures.

I came today to witness for and represent Canadian teachers, and I'm urging the standing committee to maintain the current fair dealing provisions, which balance the protection of both creators and users.

I also ask you to consider your decisions. Consider the fact that a quarter of a million teachers work with children every day in this country. The decisions made as we go forward in regard to copyright will have very damning effects on classrooms across the country, and every student in the K-to-12 system will be affected by the decisions that are made in the outcome of these hearings.

Thank you very much, Chair.

The Chair: Thank you very much.

We're going to move right to Cynthia Andrew from the Canadian School Boards Association.

You have up to seven minutes.

Ms. Cynthia Andrew (Policy Analyst, Canadian School Boards Association): Thank you, Mr. Chair, and good afternoon, everyone.

My name is Cynthia Andrew. I appear before you this afternoon representing the Canadian School Boards Association, whose members are the provincial school board associations, which represent just over 250 school boards across Canada and serve slightly less than four million elementary and secondary school students across Canada.

I am an employee of one of those provincial associations, the Ontario Public School Boards' Association. I am the key staff person for school boards both in Ontario and within CSBA on all matters relating to copyright. I am pleased to appear before you this afternoon to speak about copyright and school boards.

Copyright law affects all of Canada's school boards and is reflected in policies and practices in school board administration and in classrooms across the country. As a result, CSBA has been attentive to and active in issues related to copyright reform since the 1990s.

CSBA works closely with other national educational organizations on copyright-related policy development. That is why you will notice that many of our supporting materials are the same as those materials you have already seen from other witnesses who have come before you on this issue, for example, the fair dealing guidelines and the "Copyright Matters!" booklet.

CSBA recognizes the importance of copyright awareness in the K-to-12 education community, and we do our part, along with our provincial affiliates and our education partners, to impart the need to foster greater understanding and compliance within our schools and our classrooms. CSBA provides advice to local school boards through its provincial association members.

The provincial ministries and departments of education can exercise greater authority, making certain policy requirements of school boards. You heard from them earlier this week, I know, through the CMEC Copyright Consortium. CSBA works co-operatively with the CMAC Copyright Consortium and other national educational partners to ensure that consistent information about copyright compliance and copyright rights and responsibilities is consistently shared through our provincial school board associations with all of the school boards and their employees.

This decision to educate school board employees consistently across Canada was made late in 2012 and was only partially a result of the amendments to the Copyright Act that passed earlier that year. Significantly, the decision was also a result of the 2012 Supreme Court decision that found it was fair for teachers to copy short excerpts of copyright-protected works for their students. It is that Supreme Court decision that prompted national education associations to establish the fair dealing guidelines.

CSBA supports the fair dealing guidelines. It supported the establishment of them and worked with its provincial affiliates to ensure that directives from their respective provincial ministries were implemented effectively. CSBA believes that the fair dealing guidelines provide school boards and their employees with clear copyright policy guidance, ensuring that educators are aware of their rights and their responsibilities under the Canadian copyright law. The fair dealing guidelines ensure consistent application of the Supreme Court's decision across the country. The guidelines are aligned with copyright law around the world so that our teachers and our students are on a level playing field with those from other countries.

CSBA further believes that fair dealing for education purposes is good public policy that supports student learning and ensures effective use of taxpayer dollars. The Copyright Act balances rights between copyright owners and copyright users, and the fair dealing provision in the act is an important right for Canadian educators. Fair dealing for the purpose of education allows teachers to access a wide range of diverse learning materials and thereby enriches students' learning experiences.

● (1540)

The Supreme Court decision and the fair dealing guidelines have established a stability that CSBA supports and wishes to see maintained. Teachers are now certain when they're selecting materials for their lesson planning and when seeking those supplemental materials necessary for teaching individuals who may be more challenged with the lessons.

CSBA is aware that publishers and Access Copyright have been vocal in their claims that fair dealing has caused them economic hardship. To date, they have not been able to present sufficient evidence to support this claim beyond anecdotal examples. The other gap that is evident from the testimony to date is the degree to which the success or decline of publishers and Access Copyright reflects what is fair remuneration to creators. Will restoring tariffs and increasing tariff payments help those writers and those creators?

CSBA does empathize with the challenges currently facing the educational publishing industry. The industry is struggling to stay current with advancing technology and new perspectives about teaching and learning. Textbooks, once the primary learning resource available to educators, are now just one in a series of choices that school boards and teachers have available when preparing classes for their students. School boards spend their learning-resource dollars on digital-content repositories, subscription-based databases, online libraries, provincially developed or locally developed electronic resources, apps, and, of course, the Internet. Again, the true value of the educational use of fair dealing is that educators now have the flexibility to adapt their materials to the specific needs of each class, or even each individual student, in ways that were unimaginable just a few years ago.

While CSBA as an organization is not directly involved in any of the legal or quasi-legal actions that have occurred around copying in schools, some of our member school boards, those in Ontario, are directly involved. Other provinces' school boards are indirectly involved as their ministry is involved. While CSBA itself might not be directly involved in these matters, we certainly have an ongoing interest in ensuring that the Copyright Act continues to balance the rights of both creators and the educational users.

The fair dealing provisions in the act provide balance in both rights and responsibilities. Proceedings of the Supreme Court and other courts, which are playing themselves out today, are providing the definitions and the clarity around fair dealing. There is a new normal in K-12 school communities, which educators are adapting to, which publishers are adapting to, and which teachers and students are benefiting from, that is about access to enriched learning material. CSBA asks MPs to not be tempted to apply legislative amendments to what is already a fair and balanced approach to copyright in our schools.

Thank you.

The Chair: Thank you very much.

Finally, Ms. Marshall, you have up to seven minutes.

Ms. Dru Marshall (Provost and Vice-President, University of Calgary): Good afternoon. I'm Dru Marshall, provost and vice-president, academic, at the University of Calgary, and chair of the copyright committee there. I want to begin by thanking members of the committee for their support for the post-secondary sector. Investments in our campus through the post-secondary strategic investment fund and through the previous knowledge infrastructure program have had a transformative effect on research and learning spaces on our campus. We also really appreciate the significant federal investments made in support of Canada's research ecosystem.

I'm pleased to be here today to make recommendations to the committee and to speak about the University of Calgary's approach to copyright. First, I want to emphasize that the University of Calgary supports the retention of the fair dealing exception for education in Canada's copyright regime. As both creators and users of copyright material, universities must have a balanced approach to copyright and to the issue of fair dealing.

Fair dealing helps ensure a high-quality educational environment for students, and contributes to innovation in teaching by enabling an instructor to use a variety of examples in their lectures, exposing students to the most recent cutting-edge research. The speed at which textbooks and traditional print books are produced and distributed often does not allow for inclusion of these types of examples.

At the University of Calgary, we take a measured approach to fair dealing, ensuring it is used to supplement or complement purchased material, not to replace it. We do not apply fair dealing to print course packs, because while the university produces course packs on a cost-recovery basis, the institutional printing contract with a third party printer includes a commercial element. We also do not apply fair dealing to compilations of works such as literary anthologies. Instead we look for original sources of these works, and in most cases purchase transactional licences for them. Indeed, the university applies fair dealing to a very small proportion of course materials used in classrooms today. In a sample of 3,200 learning items, such as book chapters, articles, and Internet resources used by instructors in our winter 2017 semester, fair dealing was applied to only 250 items, or less than 8%. We most commonly applied fair dealing in instances where a chart, a graphic, or tables from a book or academic journal articles were included in the materials for a lecture.

I'd be happy to walk the committee through a detailed example of how fair dealing is applied to a specific course during the question period of today's meeting.

At the University of Calgary we also strongly discourage introducing any measures to harmonize tariff regimes, imposing statutory damages, or introducing mandatory licensing into Canada's copyright regime. Doing so would remove or threaten a university's ability to choose how to manage copyright, compel them to purchase blanket licences, and result in a university paying twice for the ability to reproduce most of its copyrighted content. This move would be a fundamental change to copyright law and should be studied very closely for all the unintended consequences that would flow from it, especially the cost implications for public institutions.

We understand that in recent government consultations on reforming the Copyright Board of Canada, Access Copyright proposed statutory damages in the range of three to 10 times the royalty for even the smallest case of infringement, with no discretion for the courts to vary from this. We also understand that Access Copyright is currently pursuing royalties, at a rate of $26 per FTE student for the university sector, through rate-setting proceedings at the Copyright Board of Canada. This rate has not yet been confirmed by the board, but if it were, this would mean statutory damages for a university, hypothetically, in the range of $78 to $260 per FTE student at the institution. That scenario would be difficult for any publicly funded institution.

Our opposition to this measure is in line with the University of Calgary's decision to opt out of the Access Copyright interim tariff in September 2012. This decision to opt out came after considerable consultation with our university community, and was driven by significant cost implications stemming from both the increase in the tariff and the limits in the repertoire offered by Access Copyright. The Access Copyright tariff applies only to the copying of print materials within the repertoire, and the details of the specific materials included were not sufficiently transparent.

● (1545)

As a growing proportion of library materials is digital, the university increasingly found itself paying twice for the same resource, paying the Access Copyright fee for print copies and also paying for the licence for digital copies preferred by the university community.

This preference and the greater cost-effectiveness of digital resources drive a growing proportion of library acquisitions. We have a digital first policy, and approximately 90% of acquisitions by our library in 2017-18 were digital, just over 10 million dollars' worth, making print-based collective licences less useful.

When we opted out of the Access Copyright tariff in 2012, it was because we recognized that we could implement institutional copyright policies that would be both more cost-effective and, importantly, responsive to the needs of the University of Calgary community.

At the U of C we take copyright compliance extremely seriously. We educate our faculty, staff, and students about copyright. For example, we recommend all course reading lists be submitted to the copyright office to ensure compliance. We have a copyright officer who attends and presents at new faculty orientation sessions and who holds regular information sessions for instructors, staff, and students on copyright. In 2017, that copyright officer gave over 22 presentations and workshops to our community.

Our learning management system includes reminders about where to seek advice about copyright issues and about the appropriate use of materials.

We provide copyright compliance assistance services. We have a copyright office that employs four full-time employees, and they processed over 7,800 requests in the winter term of 2017. The same office negotiates transactional licences and clearances on behalf of our instructors and professors.

In 2012, we became one of the first post-secondary institutions in Canada to adopt a policy on acceptable use of materials protected by copyright, which applies to the campus community. This policy includes sanctions for non-compliance.

We have a copyright committee that meets quarterly and that includes students, administration, and staff, and we have developed a rigorous, we think, and comprehensive approach to managing copyright.

In conclusion, we urge the committee to take a balanced, measured, and fair approach to copyright, one that respects the rights of both creators and users.

Again, we appreciate the opportunity to appear before you and look forward to questions.

● (1550)

The Chair: Thank you very much for all of your presentations today.

We're going to move right into questions starting with Mr. Sheehan.

You have seven minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you, Mr. Chair.

Thank you, presenters, for the very informative information you have provided.

I was a school board trustee many years ago, and I come from a family of teachers. In fact, my father used to be president of OSSTF. I'm mentioning that because he's in Ottawa today too.

I'm going to start out asking you a question I've been asking various people across the country and here. It's about copyright as it relates to Canada's indigenous people. Canada's indigenous people feel the copyright laws as they exist do not serve their traditional culture and their methods of communicating that.

We've heard from various people, whether on the oral tradition or otherwise, about how we engage. Obviously, in your schools you have indigenous children, indigenous teachers, indigenous trustees, indigenous professors, and whatnot.

Could you provide to this committee your thoughts on how we could improve copyright as it relates to Canada's indigenous population?

Anyone can start. It's for all three of you.

Mr. H. Mark Ramsankar: I will give it a start. Knowing that the indigenous population traditionally passes on knowledge through oral communication makes it difficult to put any kind of copyright on these types of learning environments.

When we're looking at a school per se that is addressing the needs of indigenous children through printed stories and materials, those are made available in classrooms, and students would traditionally be able to borrow such items through libraries or from teacher resources.

When we're talking about building the culture, it goes far beyond just whether or not it's a piece of printed material, because the experience I've had is that in schools right now it goes far beyond taking a piece of paper and putting it in the hands of the students. It's more of a lived cultural experience that has a lot more to it.

Ms. Cynthia Andrew: My experience in this matter is limited, but with respect to the purchasing of materials, there are some issues we're thinking about. If we're talking about printed materials, I think we could look at some arrangements where materials are printed or published with different parameters around them, such as between the publisher and the creator. That's something about which the publishing industry would be better informed than I, but I do know that when a creator gets their works published, their compensation depends greatly on what their contract is with their publisher. That is one thought I have.

With respect to materials that are not printed published but are oral or other things, I know that a number of school boards across Canada participate in a program that brings indigenous creators into their school to talk to all students about indigenous art. They participate in art-creating days and indigenous storytelling. By doing that, and by promoting artists in the school who come from indigenous backgrounds, we're making our students more aware of the stories and the art and the culture than they currently would be. There are often benefits to that for the community.

● (1555)

Ms. Dru Marshall: I would say that the current Copyright Act does not afford indigenous people protection for their copyright material. Part of it is the way in which those materials are produced.

We have just spent a significant amount of time putting together an indigenous strategy. I'll give one example. During that strategy, it was apparent that a written document would not tell the story we were trying to create. We wanted to use indigenous symbols to tell the story. Of course, one of the issues is whether or not you are absconding with cultural property if you use those symbols. We spent considerable time with the community. One of our Kainai elders gifted us a series of symbols that we could use, and helped put those symbols together so that an indigenous community could pick up our document and essentially read it in their language without having to read the written word.

Mr. Terry Sheehan: You asked permission.

Ms. Dru Marshall: We did ask permission. I think any Copyright Act moving forward should include this type of piece within it.

Mr. Terry Sheehan: How much time do I have, Mr. Chair?

The Chair: A minute and a half.

Mr. Terry Sheehan: Okay.

When it comes to mandatory tariffs, you're going to have to expand on this one, although I don't think with a minute and a half we'll be able to get there. This is with regard to the decision in Access Copyright v. York University and the undoubted appeal that's coming. Do you feel that the dispute between departments of education across Canada and the school boards in Ontario is in particular on whether the tariffs put in place by the Copyright Board are mandatory? Do you believe that tariffs should be mandatory, yes or no, and why?

Ms. Dru Marshall: I'd be happy to start on that, if you'd like.

I don't think tariffs should be mandatory. To speak from a university perspective, I think there are options for tariffs and for ways to clear copyright. Right now Access Copyright is but one collective. There are a variety of different ways that you can gain licences.

We had some issues with Access Copyright in terms of transactional licences, for example. We're not able to obtain them. It was an all-or-none approach to licensing, so we found that we were paying for licences twice. Furthermore, we also found that their repertoire was not transparent. It was difficult to know exactly what we had paid for.

Mr. Terry Sheehan: Thank you.

The Chair: I'm sure we can get back to that one.

[*Translation*]

Mr. Bernier, you have seven minutes.

Hon. Maxime Bernier (Beauce, CPC): Thank you, Mr. Chair.

Hello and thank you for being with us today.

My question is for several of you.

Representatives of various organizations have told us about the fees charged for the right to use authors' copies and about the fair dealing exception. I have some questions for you in this regard.

Access Copyright and Copibec asked our committee not to give too much weight to the data showing that spending on acquisitions and licences and on reproduction rights can be excessive. According to Access Copyright and Copibec, in our digital era, we have to make a distinction between acquiring an educational work and reproducing it.

Do you make the same distinction between acquiring a work and reproducing a work? The costs that people incur are primarily for the right to acquire licences and not to reproduce excerpts of works. What is your position on the distinction between acquiring licences and reproducing works?

● (1600)

[*English*]

Mr. H. Mark Ramsankar: I will open by suggesting that Access Copyright isn't in today's classrooms. Today's classrooms are complex. To simply say that a blanket licence for acquiring material is one way to build a resource to work with the complex needs of students in a classroom is unfounded.

In terms of the separation between acquiring information and then being able to disseminate it, there is a very clear distinction on it. I do know that blanket licensing, when you look at the public system across the country, K to 12, is in various forms. To have a single way that this is how we should be accessing information, and we either have a licence or we don't would be doing a disservice to areas that don't necessarily have the same type of access.

We have all sorts of remote areas in the country. Getting access to material is part of it, but then building and using that material to meet the complex needs of a variety of children in a classroom becomes of greater significance to the teachers who are working with children.

Hon. Maxime Bernier: With regard to your position on fair dealing, you said in your testimony that you don't think we need to change that. The interpretation from the court is okay in terms of the criteria to use the material, and it's a fair deal for the authors of these productions.

Mr. H. Mark Ramsankar: Well, in the interpretation as it stands, that's been working. CTF has gone to great lengths to educate teachers across the country. We use our material—such as this—for our members; in fact, in my own school this is hanging right above the copy machine.

We have materials going out in publications. I brought two of them today from across the country. Articles appear on the use of materials and the gathering of materials and on how to deconstruct a purchased piece of material for use within a classroom that does not go outside the copyright laws. The interpretation as it stands right now is something that we're in favour of.

Hon. Maxime Bernier: You don't think there's a need for us, as legislators, to change the definition of the use of fair dealing.

Mr. H. Mark Ramsankar: At this point, no.

Hon. Maxime Bernier: Okay.

Cynthia.

Ms. Cynthia Andrew: I would agree. We don't believe there is a need to change the application of fair dealing as it currently exists in the Copyright Act or the interpretation that was put forward by the Supreme Court of Canada in its ruling.

With respect to the issue of acquiring materials, I think it's important to note that school boards are very much aware when they acquire materials, particularly digital materials, as to whether or not those materials include rights to reproduce. One thing that has been debated at meetings quite extensively is that when you're looking at costs of materials, if you think those costs are high, then look at whether or not they include reproduction rights. If they do, there is a very good reason why that cost might be higher than another resource that does not include reproduction rights, even though the content of the two resources may be similar.

Boards are very much aware of those two issues and the distinction between them, and they make choices about what materials they'll be choosing accordingly.

Hon. Maxime Bernier: Ms. Marshall, can you tell us what the University of Calgary is paying in copyright costs?

Ms. Dru Marshall: The copyright costs for the university have varied. When we started in 2011, before the proposed tariff, we were paying $2.38 a student with 10¢ a copy. It varied between $10 and $15, I think, when all was said and done at the end of a year, per FTE student. We have about 30,000 FTE students on our campus, so that gives you an idea.

We opted out in part because to go from $10 to $15 to $26 or $45 per FTE seemed like a very large jump. We have to manage a number of competing stories all the time at institutions. We are publicly funded. We look very carefully at the use of taxpayer dollars. Our institution has not passed on the costs of copyright to students, believing that this is part of what we do as an institution.

For us, in terms of the issues in copyright and fair dealing, we did not opt out until the Supreme Court of Canada's decision on fair dealing. We thought this was an absolutely critical part for Canadian society. It's very important for universities to be able to share information and to build on information. The idea that you can use part of the information available to take and build on it, to create different research, is a very important part of what we do at the university in both research and teaching.

I would strongly support the fair dealing concepts as they currently exist.

● (1605)

The Chair: Thank you very much.

We'll move to Mr. Cannings.

Welcome to our committee. You have up to seven minutes.

Mr. Richard Cannings (South Okanagan—West Kootenay, NDP): Thank you, Mr. Chair.

As you can gather, I'm not usually on this committee, so I haven't heard the testimony leading up to this. I do have a bit of a background from both sides. I worked at UBC for many years, and I have written a dozen or so books. I get my Access Copyright cheque every year. It's not a lot, but it's a nice surprise. It has been getting a lot smaller lately. I see that. I also have quite a number of authors living in my riding who have talked to me about this issue. A lot of them write fairly regional books on history and natural history that are used in schools. These people don't make a lot of money from their writing, so that Access Copyright cheque was actually a good chunk of their annual income. For me, it didn't really matter that much. I see the fairness issues on both sides.

Ms. Andrew, you mentioned that Access Copyright hadn't been able to show undue economic hardship on authors. I think that's what you were trying to say. I'm wondering what the economic hardship is on schools, colleges, and universities. We have statements here in the notes. For instance, Winnipeg School Division spends $34,000 a year on copyright materials, $1 per student. Ms. Marshall was talking about something a little bit higher.

I'm just wondering what you think would be fair and not causing hardship to school boards.

Ms. Cynthia Andrew: I'm going to backtrack just a bit and clarify my comments about Access Copyright. What I was saying is that they haven't been able to convince with evidence in courts that it is the case. There's a lot of anecdotal evidence that they've come forward with, and stories that they've told, and I know from my own experience that what you said about Access Copyright cheques going down is happening. What I'm trying to say is that they haven't been able to demonstrate in a court of law that the evidence exists—to date.

What I would also like to say is that with respect to how school boards quantify what they spend on—quote, unquote—copyright, those costs go beyond what they would spend on a tariff, because reproduction rights are built into many of the resources they are currently purchasing, which is similar to what you were saying about paying for something twice. With respect to what a school board views as fair, we view the fair dealing guidelines as the most fair way to apply copyright to educational use of works.

With respect to authors who have regional interests in their works, I know that in Manitoba and the Atlantic provinces there are arrangements that the provincial departments of education—I'm sure this may happen in other provinces, but these are two that I'm aware of—have made with local authors to license their material separately and to provide some sort of subsidy or grant so that those materials can be used in the schools outside of their relationship with Access Copyright. This is something that a lot of provincial governments are looking at, particularly where resources have a specific interest for a local region.

● (1610)

Mr. Richard Cannings: I'll move to you, Mr. Ramsankar, and ask about the movement from print to digital and online resources that you were talking about. Perhaps all of you mentioned that.

Could you expand on that? What's the proportion of online versus print material used in classrooms, if you know, and how might this affect authors or producers of that material? How is that factored into your purchases? Are teachers going online and looking for free material specifically because it's free?

Mr. H. Mark Ramsankar: I don't have at my fingertips the exact figure for the percentage of online versus print material in terms of the uses in classrooms, but I would suggest that teachers are subject to their own personal purchasing power—that of the school. For example, teachers don't purchase textbooks on an individual basis. They would be purchasing individual materials to use for either developing a curriculum or building a unit for their students. Depending on the complexity of the classroom, they may require different types of access to material. The concern that teachers are looking at right now is what they are subject to in terms of the use of material that is purchased and that they've already brought into their classroom to augment the curriculum development.

What we're talking about right now through fair dealing is that it allows excerpts to be used by teachers. On the notion, for example, that whole textbooks are being printed, I can say for a fact that in terms of the budgets in a school or a teacher's individual purchasing power to be able to photocopy, that's unheard of. In fact, many teachers across the country are subject to specific accounts that limit the amount of photocopying they're allowed to do. Necessarily, when you're talking about your own developed material and the materials you would be using in your classroom, going out and printing something that has copyright applied to it is wasteful, and it's not used in that sense.

As digital material is brought into the classroom, it's cited so that students are aware of it when they are using it in their own research. Teachers do talk to students about the development of copyright citing and about giving credit for material and thoughts that are not their own. That's generally the use in K-to-12 classrooms.

The Chair: Thank you very much.

We're going to move to Ms. Ng.

You have seven minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you so much.

Thank you, everyone, for coming in to speak to us on this important study.

I'm going to start with the Teachers' Federation and pick up on what Mr. Cannings was talking about.

I think you already touched on this, but I'd like you to talk to us about a set of policies that exists for teachers regarding compliance with fair dealing. We certainly have heard from publishers and authors about an excess use by teachers. I know you have a booklet, and I think the booklet is out there for all of your teachers. Just expand on that a little bit, and maybe the School Boards Association could talk to us about that, as well, to help clarify our understanding of the policy and the rules that teachers actually work within to comply with fair dealing.

Mr. H. Mark Ramsankar: We went to work right after the Supreme Court ruling, and that was the production here, with our education partners. There were, during that time, professional development opportunities in the different provinces, put on by our member organizations, to speak directly to copyright. The article that I cited just recently is from March-April, 2018. There's still an article talking about fair dealing and copyright. It's alive and well with our professionals as they're coming in and. As our population or the demographics in teaching turn over, we are continually vigilant to make sure that teachers understand that what they're doing in using copyrighted material falls within the latest definition of compliance.

In answer to the question of how we continue to do it, the rules are laid out. Most of the evidence I've heard about teachers going outside of compliance rules is anecdotal, and I would consider those cases very much one-offs. I don't say that tongue in cheek. Individuals who take opportunities to go outside of use are usually cited. Either the principal or the board itself will make note of that. The teachers are made aware of it, and material is either withdrawn or taken back. But these are very much one-offs, and I can't emphasize that enough. This is not a mass happening across the country.

● (1615)

Ms. Mary Ng: To the School Boards Association, what kinds of policies or rules are in place to help guide compliance in the schools?

Ms. Cynthia Andrew: I'm going to split your question in two.

There's the education aspect, what we do to educate our staff, and Mark has spoken very eloquently about it. It happens at multiple levels. We all use consistent materials. You'll see that we have the same book. We use the same fair dealing guidelines. There are posters produced by provincial governments through their involvement in the CMEC Copyright Consortium, which go out to every school. Every year in September, this material is redistributed through the provincial associations or provincial departments down to the boards and through the boards to the schools. This happens on an annual basis. All the materials are shared on a regular basis, and then they're also shared through other means, such as their unions or education articles and things like that. There are lots of opportunities for this information to get shared with school board staff, not just teaching staff but all staff.

On the side of compliance, it is a school board's responsibility to ensure that its staff are following all of their policies. School boards have a number of policies. Any non-compliance with copyright that is identified would be dealt with through the process a school board follows depending on which province it's in. It's going to vary from province to province, and may even vary board to board, in terms of which process it follows to communicate with the teacher about what they've done wrong. Frequently, when things are brought to a board's attention about non-compliance, it's more a matter of, "I just didn't know that" than it is a matter of, "I didn't care." It's a matter of ensuring that the person is educated about what they're supposed to do, and then, very rarely...in fact, I've yet to be made aware of a situation in which there has been a recurrence of non-compliance. From that perspective, I think that school boards are doing their due diligence as employers to ensure that their employees are following all of their policies and that laws are outlined in that.

Ms. Mary Ng: Thank you both. We certainly heard from everyone, I think, that they want to ensure that the works of creators are respected and that compensation for them is fair and so forth, while at the same time, as I said earlier, we heard from publishers and authors who clearly indicated an impact.

Just for our understanding, can you talk to us, from a school board perspective, about spending? Did you at one time, like the universities and other post-secondary institutions, pay the tariff and now, just because teaching methods have changed and materials are available in many different formats, rather than going through the tariff method of paying for the material, have you gone through the transition to paying for transactional licences?

Has your spending changed? What was it before and what is it now?

● (1620)

Ms. Cynthia Andrew: I would suggest that our spending hasn't changed. The tariff amount that we pay—

Ms. Mary Ng: Do you have data on that at all? Do the school boards—

Ms. Cynthia Andrew: We don't nationally. Education is a provincial jurisdiction, so it's very difficult to get national information on how spending occurs. It's actually difficult to get it even at a provincial level because not all provinces have the same budgeting structure. What might count as learning resources in one province doesn't count as learning resources in another, and that sort of thing.

Ms. Mary Ng: I think I'm almost out of time. Could you try to get at that?

Ms. Cynthia Andrew: All right.

Now I've completely lost track of my mind.

With respect to spending, I would suggest it hasn't changed, but what's changed is what we're buying. We're buying more of the digital-based resources and a greater variety of materials.

What was the other half of the question?

Ms. Mary Ng: That's it. I think I'm out of time.

The Chair: That's good. That's all you have time for.

Mr. Lloyd, you have five minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair.

I appreciate everyone coming and the testimony today.

Ms. Andrew, kind of related to the previous question, what are the current costs overall for copyright for your stakeholders, and can you break that down on a per student cost on average across Canada?

Ms. Cynthia Andrew: I can't and I wish I could, because I would love to be able to answer that question. I think that it would serve me well to be able to answer that question.

Mr. Dane Lloyd: In the evidence we have been provided, the Winnipeg School Division told us they pay about $1 per student. So for 34,000 students, they said the cost is about $34,000. The information that was provided to us by Access Copyright says that the tariff has been set at $2.41 per student per K-12 student. However, the majority of schools outside of Quebec are no longer paying any tariffs, and so the cost would be zero dollars for collective licences.

Would you say that's correct?

Ms. Cynthia Andrew: For collective licences it is. For licensing, I would suggest it is not. I think we do pay for licensing, and I do think we pay for reproduction rights.

Mr. Dane Lloyd: Who is being paid for that?

Ms. Cynthia Andrew: In some cases, it's a distributor of an online database. It is the creator of a repository. Provincial governments, when they do material portals, will often pre-clear all of the materials that go on those portals and, where payment is required, will make that payment. This happens at board levels, at provincial levels.

Mr. Dane Lloyd: Prior to 2012 you were paying a collective licence, and after 2012 you're no longer paying a collective licence, so would you say there's any correlation with the loss of revenue for Access Copyright?

Ms. Cynthia Andrew: I think the loss of revenue for Access Copyright can be attributed to many different types of changes.

Mr. Dane Lloyd: If you're not paying them, that's lost revenue for them. Is that correct? It seems kind of obvious.

Ms. Cynthia Andrew: I think if we were paying them, they would have that revenue, yes. Who wouldn't have it would be the same creators only in a different area. They wouldn't be getting it through these other areas.

Mr. Dane Lloyd: It seems there's a direct correlation between the K-12s not paying the collective licensing and then the authors not receiving the royalties for their costs. Authors are hurting because K-12s aren't paying for the copyright. Is that correct?

Ms. Cynthia Andrew: I would suggest that most of the purchasing that happened in K-12 sections was through educational publishers, and very little of it went to individual authors, but, yes, there would be some impact.

Mr. Dane Lloyd: Thank you. I appreciate that.

My next line of questioning is for Mr. Ramsankar.

Thank you for your testimony. Would you say that previous to 2012, teachers had a hard time accessing copyrighted works to give to their students? Has there been a significant change since 2012 for the on-the-ground teacher?

Mr. H. Mark Ramsankar: For the on-the-ground teacher, when you're speaking about access to copyrighted material, it has to be defined. If you're talking about textbooks and textbook material, that's provided by the employer. The individual teacher who is using resources in the classroom would be using material that would be in the form of articles, individual novels, and that sort of thing, which a school may produce.

Mr. Dane Lloyd: Were they having trouble before 2012 accessing those resources you just mentioned?

Mr. H. Mark Ramsankar: I want to be careful in how I say this, because for the bulk of my career, I've been focusing on resourcing schools and classrooms. That takes many different forms. It takes the form of time and material as well as the ability to produce materials on their own for classrooms.

● (1625)

Mr. Dane Lloyd: Was there a big difficulty in accessing files before 2012?

Mr. H. Mark Ramsankar: Teachers did not have issues accessing materials that were provided by the employer.

Mr. Dane Lloyd: Thank you. I appreciate that.

My final 45 seconds is for Ms. Marshall.

I really appreciate your testimony. I'm going to rant a little bit here, because a lot of universities have not been able to provide us with the data. You said you used 3,200 works, with 250 that have been used through fair dealing. I really appreciate receiving that breakdown, because that's the kind of accountability that I think a lot of the stakeholders want to see from the universities so that we can dispel the confusion around this issue.

Your fear of having to pay $26 going years back is such a huge fear. Would you say it would be better for the Copyright Board to be more forward-looking and to set rates over the next five years so that you can have predictability and stability in your funding and in what you need to pay?

Ms. Dru Marshall: Yes.

Mr. Dane Lloyd: You would say yes, that's something you'd like to do.

Ms. Dru Marshall: Yes. I think there's a fear across the country in post-secondary institutions about any retroactivity, particularly when we think we've been managing copyright in an appropriate fashion.

Mr. Dane Lloyd: Thank you. I appreciate that.

The Chair: Thank you very much.

We're going to move to Mr. Jowhari.

You have five minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

Thank you to all the witnesses.

Mr. Ramsankar, I'm going to start with you. In your opening remarks, you made a comment, and I'm not going to quote you, but my understanding of it is that the need in the classroom has changed and Access Copyright is not in the classroom and they don't understand the change in that need and the complexity of today's need to be able to help the children in the class from K to 12. Can you expand on that and explain to me why Access Copyright doesn't understand that? What has changed? Until last year, I had a K-to-12 student, and he was still using textbooks.

Mr. H. Mark Ramsankar: The variety of material that is used, in a teacher's view, needs to be accessible. However, the use and dissemination of that will change depending on the nature of the students in the classroom.

When I talk about the change in the classroom, I'm talking about the demographics within the classroom and children who have needs that go beyond the norm. Teachers need to have the flexibility to be able to alter and work with the material to meet the individual needs of a child.

For example, if you have a student in grade 3 who is reading at a grade 3 level, there are certain approaches and strategies teachers will be able to use. If the same classroom has students who are reading at a grade 1 level, then the same material, because it's part of the curriculum, has to be disseminated differently. It has to be broken down. It has to be created in such a way that the child at that level will be able to understand the concepts being taught.

When I talk about understanding what it's like to be in the classroom, I am suggesting that the idea of just doing blanket material and having blanket licences that are the same for all, because you're purchasing the material, doesn't necessarily work in all scenarios, because you're not able to take one type of material and then just apply it to today's classroom.

Mr. Majid Jowhari: Thank you.

Ms. Andrew, you said that Access Copyright is using anecdotal numbers, and they really haven't been able to clearly demonstrate in a court of law that there is actually infringement in reproduction. They were here on Tuesday and shared some numbers with us. The claim they made is that 600 million pages are copied for free. They said they've had an 89% reduction in their royalties. Can you expand on where you think those numbers might be coming from?

Ms. Cynthia Andrew: I think I would like to know as much as you would where that figure of 600 million copies comes from, quite frankly. I'm not sure where it came from. I'm not sure if it's K to 12 only or if it includes post-secondary copies as well. If there are 600 million copies per year, and if there are five million students, that's 120 copies per student per year.

That makes how much per month? In 10 months, that makes six copies per student per month. I'm getting that wrong. My math is not my strong suit. Anyway, it makes for a low enough number that to me this does not demonstrate industrial copying, if you will, or widespread copying. It means that teachers are copying short excerpts, like the Supreme Court said they were.

● (1630)

Mr. Majid Jowhari: Before that they were not...? Access Copyright said its aggregate revenue went down after 2013, from $40 million to somewhat below $10 million in 2017. Is that attributed to the complexity? Might one thing be the complexity in the way we are providing material?

Ms. Marshall, you're trying to jump in. Any of you can answer that question.

Ms. Dru Marshall: I'd love to answer that question. There is no question that Access Copyright revenue would have gone down, because a number of groups opted out of the collective. They were no longer paying their fees, so of course their revenue was going to go down.

Mr. Majid Jowhari: Is that fair?

Ms. Dru Marshall: Well, here's the choice you have as an administrator of a university: you can choose to belong to that collective and recognize that on multiple occasions you pay twice, or you can choose to manage it your own way and clear copyright in a different way. It's not that we are not clearing copyright. We're just deciding to do it in a different way. We're deciding to purchase licences in a different way.

There's no question there's a tie to a decision where people decided to opt out of a collective. With the number of universities that opted out of its licences, I'm surprised, to be honest, that Access Copyright has been able to survive as long as they have.

Mr. Majid Jowhari: I'm over my time by 45 seconds. I thank the Chair for his indulgence.

The Chair: That's okay. We enjoyed the answer.

We're going to move to you, Mr. Jeneroux. You have five minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): That's perfect. Thank you, Mr. Chair.

Thanks to all of you for being here. Ms. Marshall and Mr. Ramsankar, you are both from Alberta. I appreciate seeing you both again.

Not to leave you out, Ms. Andrew, coming as you do from the big city of Toronto—

Ms. Cynthia Andrew: I actually live in Brantford.

Mr. Matt Jeneroux: Do you? You've cleared the record.

Mr. H. Mark Ramsankar: I'm living in Ottawa.

Mr. Matt Jeneroux: You're living in Ottawa? My goodness.

I want to quickly ask you this, Ms. Marshall. Do you have any relationship at all with Access Copyright now?

Ms. Dru Marshall: No.

Mr. Matt Jeneroux: Not even through a distributor of any sort?

Ms. Dru Marshall: We opted out of their licences. We have gone back on occasion to ask for a transactional licence for something that is in their repertoire. They have used an all-or-none approach: if you're not in the licence, in the collective, you're not allowed to do a transactional licence.

Interestingly, that has resulted in our going to different copyright collectives, such as the American Creative Commons, to purchase transactional licences.

Mr. Matt Jeneroux: When was the last time you contacted Access Copyright?

Ms. Dru Marshall: It would have been probably in 2013-14. Once we opted out in December 2012, we went back on occasion. As we opted out, we were surprised by what we found out, which was how many licences we had paid for twice because we weren't sure that the licence was included in the repertoire we had purchased.

Mr. Matt Jeneroux: That's interesting.

Mr. Ramsankar, I want to question you a bit. We heard from Ms. Marshall about the potential for retroactive payments that could happen if the York decision maintains this where it is right now. It was against the fair-dealing guidelines and is now under appeal, as we know, but there is the potential that it will stay the same.

Your website directs visitors who have questions about copyright to the fair-dealing guidelines that were produced by one of our previous witnesses, the Council of Ministers of Education for Canada. I think you brought the booklet with you. I take from this that your CTF is obviously endorsing the guidelines, even though they were essentially thrown out in the York decision. Again, that's under appeal. If that decision remains the same, does the CTF have any plans or considerations in place to continue to pay for that copyrighted material?

● (1635)

Mr. H. Mark Ramsankar: At this point the York decision is in the courts and it's viewed as an outlier, so to make speculation or to try to suggest decisions that we would be going with at this point, I think, would be premature. On that basis, it is too soon to be able to say that we would go in one direction or the other.

York was an outlier and right now the courts are dealing with it.

Mr. Matt Jeneroux: Okay.

We've had it addressed by Ms. Marshall and Mr. Ramsankar.

I'll give you the opportunity, if you wish, Ms. Andrew, to comment on any plans if the York decision is maintained. Are there any plans in place for your organization to make retroactive payments?

Ms. Cynthia Andrew: I'm going to repeat the sentiment that Mark has put forward. At this point we do not have any plan in place. All of those decisions will be made once a final decision on the court case has been determined. Again, we do believe it's an outlier, and that previous court cases found in favour of users, so we're hopeful.

Mr. Matt Jeneroux: Okay.

The Chair: You're very effective with your time. Thank you very much.

We're going to move to Mr. Graham.

You have five minutes.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

I'll start with Ms. Marshall.

You mentioned today that 90% of your spending in 2017-18 was on digital material. Can you compare that to five years ago or 10 years ago? Obviously 20 years ago there wasn't very much. Can you give us a sense of that timeline?

Ms. Dru Marshall: This is a really important question, because there have been many stories that tie the loss of revenue to authors to fair dealing. In fact, I would tie that loss of revenue to the digital revolution.

We actually have a digital library. We do not have books in our library or very many books in our library.

Our digital library opened in 2011, and I think at that time we were probably close to 30% digital and we're now up to 90% in terms of costs in a year.

Mr. David de Burgh Graham: The change has been very rapid.

Ms. Dru Marshall: Yes.

Mr. David de Burgh Graham: Do all of you see a significant difference in behaviour between educators of different generations—I'll put it that way—with regard to who uses digital and who uses traditional paper materials? As a new generation of educators is coming up, are they not looking at paper?

Ms. Dru Marshall: I'll give a quick answer.

At the universities right now, we are dealing with students who are digital natives, so you ignore digital content at your own risk when you're a professor.

Mr. David de Burgh Graham: That's fair.

You mentioned earlier that there are sanctions for non-compliance in your processes.

Ms. Dru Marshall: Yes.

Mr. David de Burgh Graham: How do those work? What are the sanctions?

I'll give you the opportunity to look in detail at the example you mentioned in your opening. It's a good chance to do that.

Ms. Dru Marshall: I have our policy here. I'll read the sanctions for people who are out of step with our policy:

> Employees and post-doctoral fellows who use material protected by copyright in violation of this policy may be subject to formal disciplinary action up to and including dismissal.

Mr. David de Burgh Graham: Has that happened?

Ms. Dru Marshall: It's very, very serious. It has not happened, but we certainly have had sanctions before.

For the students:

> Students who use material protected by copyright in violation of this policy may be disciplined under the Non-Academic Misconduct Policy—

—which allows for expulsion from the university.

As I said at the beginning, we take this very seriously. We take an educative approach in the first instance. For the first offence we say, "Here are the things you must be aware of." When we find something that has happened, we go back to ensure that authors are appropriately provided with the dollars that they should have been in the first place.

I am happy to give you an example of fair dealing, or of e-books versus the print copy costs, if you'd like.

Which one would you like?

Mr. David de Burgh Graham: Why stop at one?

Ms. Dru Marshall: Okay.

Let's go e-book versus print costs. Because we're a digital library, e-books are purchased whenever possible and when available. We look at the cost of a multi-user e-book. It's often less than a transactional licensing fee and it doesn't limit access to students enrolled in only one course.

For example, licensing of two chapters of the book, *Oil: A Beginner's Guide*, 2008—this is an important book in Alberta right now—by Vaclav Smil, for a class of 410 students would cost the library $2,463 in U.S. currency. In contrast, the cost of an unlimited licence for three e-book versions would be $29.90 through Ebook Central, and the book would be available to all library users.

That's, in many cases, why we've gone digital.

I would say, similarly, the cost of licensing two chapters from the book, *Negotiations in a Vacant Lot: Studying the Visual in Canada*, by Lynda Jessup, et al, for a class of 60 students would be $414 Canadian, while the cost of an unlimited licence on Ebook Central would be $150 U.S.

There is a tremendous difference in these costs. We use those, and we also are dealing with the needs of our students, who want the material digitally. They prefer to do that. Our professors are very conscious of ensuring that students are getting materials in such a way that they're going to use them.

● (1640)

Mr. David de Burgh Graham: I appreciate that.

To all of you, the Copyright Modernization Act five years ago was famous for bringing in TPM exemptions to copyright. I'm wondering how that affects you, if at all. Those are the technological protection measures. If you have a digital lock, fair dealing no longer applies.

Mr. H. Mark Ramsankar: In terms of the teachers we're looking at, we don't have the ability to unlock. You're using one piece of material at one time. It's not like you can unlock it and then go through it. That's the experience I've had with the teachers in our systems.

Mr. David de Burgh Graham: Is there a lot of material they're just not accessing as a result of that?

Mr. H. Mark Ramsankar: That is the result. Teachers don't have the time, by and large, to start trying to unlock things and figure out how to use one specific material. If it's not accessible, they're moving on.

Ms. Dru Marshall: I think this is a really important area for this committee to pay attention to.

Mr. David de Burgh Graham: That's why I brought it up.

Ms. Dru Marshall: Let me give you an example. We purchased not long ago a variety of CDs. This is how rapidly the technology changes. Now, of course, people want to stream the material live in their classrooms. If we want to do that, we have to pay for a new licence for exactly the same material. It's interesting; while the digital revolution has been absolutely spectacular in terms of teaching and research, this is a new age, and I think the copyright laws have to be updated to help us manage.

Mr. David de Burgh Graham: I'm out of time, but if I have a chance later, I'd like to come back to that.

Thank you.

The Chair: Thank you very much.

Mr. Cannings, you have two minutes.

Mr. Richard Cannings: Ms. Marshall, you mentioned other collectives that you're part of. Is there a place for a national collective like Access Copyright? If there is, how should it be designed?

Ms. Dru Marshall: That's a fantastic question. One of the values I think we hold near and dear as a country is choice. It seems odd to me that we would force institutions like ours to make one choice around something that is really important from an educational perspective. We have to balance the rights of creators and users.

I'll leave it at that. I would hate to be forced into something when you know there are alternatives that might be better for particular institutions. I don't think it's fair to say one size fits all.

Mr. Richard Cannings: Is there no way that a new Access Copyright could be designed so that there was that flexibility?

Ms. Dru Marshall: It's possible, but I think you'd have to look at that very carefully. There would probably be sliding scales of cost, depending on what people would want to do. I think Access Copyright took some very draconian steps to try to protect users, and the associated decreased author fees, with a number of things that actually were fallacious. I would say that decreased author fees are more associated with the digital revolution than with fair dealing, for example.

Mr. Richard Cannings: Do either of you want to comment quickly on that?

Mr. H. Mark Ramsankar: I'll just echo Ms. Marshall's comments. The onset of the use of digital material has had a dramatic effect on the use of print material, in that sense. To try to draw a direct correlation between print material and the non-use of Access Copyright as opposed to the impact that the digital age has had isn't doing a service to the people who are using the materials, at this point.

● (1645)

Ms. Cynthia Andrew: I would like to add to that the fact that we cannot purchase transactional licensing from Access Copyright. I get numerous requests from school boards who want to copy more than what the fair dealing guidelines allow and want to know how to do it. My answer has to be that you approach the author, publisher, or copyright owner directly. If they say no, then you do not copy. Your choice is to get permission, and payment where it's required, and if you cannot get permission and payment where it's required, you do not use that material. You find other material.

Nine times out of 10, people have to find other material because they cannot acquire a transactional licence.

The Chair: Thank you very much.

Mr. Bratina, you have five minutes.

Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.): Thanks.

I'm going to try this out like Mr. Sheehan did. I married a teacher. Her brother was a teacher, and he married a teacher. Their two kids are teachers, and one married a teacher and one married an EA. I ran for federal politics so that for six months of the year I don't have to listen to teachers' conversations.

Voices: Oh, oh!

Mr. Bob Bratina: Also, my son has his M.A. in library science and he's now a Mountie in northern B.C., so I think we're....

The reason I mention this is that at all of those dinner-table conversations, I never heard this come up. The only thing I ever heard, really, was whether on a snow day you could play the movie *Oliver!* for the kids who showed up.

How pervasive.... Mr. Ramsankar, you held up the material that you have hanging.... You both have it. Is that how it's circulated among the teachers?

Mr. H. Mark Ramsankar: We work with our member organizations to see that the material is available. It is in schools. As I say, this material is hanging in the photocopy room, but we go beyond just the material that's contained here with the rules.

I cited an example. As I said, this is from March-April 2018, out of Newfoundland. The articles in here talk about the copyright issue, the use, and whether or not teachers are complying. To be honest with you, you're talking about your dinner conversations around the table that are about education, but teachers that I sit with don't sit around the dinner-table talking about copyright. What they talk about is how they are strategizing to work with student X or what happened in the classroom. Copyright comes up when you have parameters set around you to access material or to help children access material; that's when copyright comes up. The title of our booklet is right there, *Copyright Matters!* There is respect when you're talking about developing materials to use in your classrooms.

In fact, I will take it a step further. As I've said, I speak for K to 12. When we're teaching about ethical research and writing papers, it goes right back to simple things like plagiarism: giving people credit for what they have written and what they do and making sure they are cited correctly. As teachers, we need to model that.

Simply making the statement that a teacher would blanket-copy a hardcover or a piece of paper, disseminate that out on the one hand and then say, "oh, by the way, you have an ethical responsibility", doesn't fit. That's why I say that most of the anecdotal examples of evidence are one-offs or are about people who have gone outside.

When cited about it, it's not automatic that an employer or a principal will take a punitive measure on an individual. It's a teachable moment. You talk about copyright and how it goes. You make the corrective measure and you move on. That is what we're talking about in terms of the use of materials in classrooms.

Mr. Bob Bratina: The digital topic is common at almost every conversation now, by the way.

Who monitors compliance, or how is it monitored?

Ms. Cynthia Andrew: First, the person who would monitor it would be the principal, because that is the person who is responsible for distributing. Once they get it from the board, it's their responsibility to distribute the material to their staff and to talk about it in a staff meeting. Every principal across Canada is asked to speak at a staff meeting about copyright at the beginning of every school year. That is the first step.

Every board is asked to have a staff member in their administrative office who is familiar with copyright, so that when principals have questions that go outside their original knowledge base, they have someone to turn to. There is someone at the board level.

If the question goes beyond the person at the board level, there's a list that's available.... I don't think it's actually in this book. No, it isn't. There's a website that was created by the people who worked to create these materials. There's a copyright decision tool on the website fairdealingdecisiontool.ca. I encourage all of you to take a look it. That particular website has on it all of these materials for instant download. It also contains a list of provincial contacts. If your question goes outside what you can copy under the guidelines and is more complicated than that, in there is a list of contacts at the provincial level for you to reach out to in order to get the answer to your question.

● (1650)

Mr. Bob Bratina: That's very helpful. Thanks very much.

The Chair: Thank you very much.

We're going to go to Mr. Lloyd.

You have three minutes.

Mr. Dane Lloyd: Thank you, Chair.

The next line of questioning is for you again, Ms. Andrew.

My colleague Mr. Jowhari had some incorrect information. It wasn't 600 million pages for the K-12 sector. We actually have evidence from the Copyright Board's decision on February 19, 2016, that there were 380 million pages of published works from Access Copyright's repertoire copied each year, and that this was done by the K-12s from 2010 to 2015. The Copyright Board ruled in 2016 that out of those 380 million pages, 150 million pages were illegally copied by the K-12s.

Ms. Cynthia Andrew: The point is that those copies were compensable.

Mr. Dane Lloyd: Yes, they needed to be compensated for them. Have the school boards paid compensation for those in the wake of the decision by the Copyright Board?

Ms. Cynthia Andrew: We have not, because Access Copyright does not offer us transactional licensing.

Mr. Dane Lloyd: The Copyright Board has made the decision that you copied 150 million pages without compensating, but you haven't compensated the board, so are you...?

Ms. Cynthia Andrew: If you look at the breakdown of what those pages are, those pages come largely from materials that are considered to be consumable documents, documents that were sold for one-time purposes.

What we did in response to that was to send out a prohibition to all of our school boards across Canada, through the ministries of education, through CSBA, and through the unions, that consumables are no longer allowed to be copied. They are illegal and therefore shall not be copied. There is a poster—

Mr. Dane Lloyd: That's very important, and I think they would appreciate that and the authors would appreciate that, but what about the pages that were printed before that time? I know it's going forward, but has it been compensated for going back? Have you complied with the Copyright Board?

Ms. Cynthia Andrew: We paid a tariff going back.

Mr. Dane Lloyd: You paid the tariff going back previous to the 2016 decision?

Ms. Cynthia Andrew: We paid the tariff for 2010, 2011, and 2012.

Mr. Dane Lloyd: These numbers go from 2012 to 2015 as well, so you're not paying the tariffs for that period?

Ms. Cynthia Andrew: That is correct. We are not.

That data, by the way, was found in a survey that was conducted in our schools in 2006, so it's more than 10 years old. I would suggest to you that copying habits from that time to now are substantively different. The Copyright Board itself did say in that very same ruling that the data was outdated and beyond its useful purpose. I would suggest that copying from consumables would look very different if we conducted a survey today.

Mr. Dane Lloyd: I'm not familiar with consumables. Can you describe them briefly?

Ms. Cynthia Andrew: When you go to Costco, there can be something called "Math for Grade 2". It's colourful and has pictures and you fill in the little blanks. It's intended for you to take home to your child to have them fill it in. Similar kinds of materials are created by publishers for educators. They're intended for one-time use. Those kinds of copies are not—

Mr. Dane Lloyd: They're distinct from a book, for example.

Ms. Cynthia Andrew: They're distinct from a book. They're also distinct from a resource that's intended to be copied, which we call a reproducible, in which case a creator will give a teacher's guide that has blank pages in it. It's intended to be copied.

● (1655)

Mr. Dane Lloyd: I appreciate that explanation. Thank you.

My final question is for Ms. Marshall. We've heard from many different universities and although many of them had joined York in this case, there seems to be a difference in policies at these universities. For example, I believe the University of Guelph continues to pay for a certain level of collective licensing.

Is there a disagreement amongst the universities or is there a monolithic agreement over fair dealing, copyright, and licensing?

Ms. Dru Marshall: I think there's general agreement on fair dealing. I think there are various points of concerns, partly related to the size of the university, with regard to how you manage copyright and whether you can be effective. For example, some universities opted out in 2012 and, when there was a model licence developed, opted back in because they thought there was better protection in doing that.

Mr. Dane Lloyd: Are there some universities that have chosen to opt back in to the process?

Ms. Dru Marshall: Yes, absolutely.

Mr. Dane Lloyd: Something I thought was interesting was that it seemed as though Access Copyright was asking for an exorbitant amount, $45 initially, but that was negotiated down to the $26 amount.

Ms. Dru Marshall: Right.

Mr. Dane Lloyd: That's almost half the amount. That might very well be the best number, but isn't there an opportunity for more back and forth for universities, to get a better number for the universities?

Ms. Dru Marshall: I would hope there would be, but if, for example, we were paying in the $10 to $15 range, with the $2.38 plus the 10¢-per-page fee, then going up to $26 and then $45 would seem ridiculous to me. When we're doing our costs, if our students are $10 to $15 a student, why would I pay $26? That's the concern for me. Do we have the numbers the right way, and why did we jump to $26?

Part of that, I think, is that Access Copyright, and rightly so, wants to protect creators. But part of the issue that we have not discussed at all here is the publishing industry. When one of our professors, for example, writes a textbook, we don't control the contract with the publishers. The publishers are having record profits while the authors are getting less money. There is something wrong.

In response to an earlier question, we balance being part of a collective, not only for copyright.... I mean, all those opt-out institutions got together and shared information. We talked about how we would clear copyright. We shared best practices on how we did that. That, I would argue, is a collective in and of itself. We also joined together in many ways to purchase product from publishers, to see whether, if we were part of a collective, we could get a better deal. We've had to come out of those as well, because we're finding that the publishers are just ratcheting up. There's a monopoly with five or six companies, and intellectually, when we talk about academic material, that makes it very difficult. This is why you see the rise of open educational resources and open access materials, which also have had an impact in this area.

Mr. Dane Lloyd: I appreciate that.

Thank you.

The Chair: The publishers are actually coming in next week.

For the final three minutes, Mr. Graham, you have the final take of the day.

Mr. David de Burgh Graham: I hope my three minutes will be about the same as Dane's three minutes.

The Chair: No, no. They'll be a tight three minutes.

Voices: Oh, oh!

Mr. David de Burgh Graham: All right.

On a couple of occasions, Mr. Ramsankar and Ms. Andrew, you've held up a book. I want to make sure we have it on record. I believe it's called "*Copyright Matters!*"

Mr. H. Mark Ramsankar: Yes, it is.

Mr. David de Burgh Graham: Is that in itself in the Access Copyright repertoire?

Ms. Cynthia Andrew: No.

Mr. David de Burgh Graham: Is that something we could get a copy of? I think what it says could be quite informative for our study.

Ms. Cynthia Andrew: I can leave you my copy. I believe it was distributed by CMEC last week, when they were here.

Mr. David de Burgh Graham: I wasn't here last week.

Ms. Cynthia Andrew: It's also available through a free download from the copyright decision tool.

Mr. David de Burgh Graham: Excellent. I'll take a look at that. Thank you.

Ms. Marshall, in your earlier comments, you discussed at length the lack of transparency from Access Copyright. Could you go into more detail? You mentioned that you were double paying for the same material. Can you expand on that? How do you even know?

● (1700)

Ms. Dru Marshall: There are two ways in which universities double pay. The first one is that if we purchase a licence in print material and then we want it in digital, we have to pay for it again. Access Copyright doesn't deal very much in digital material, so that creates an issue.

The second way is related to research that universities produce. Research on campuses is typically federally or provincially funded through the public purse, or the vast majority of it is. Universities take that money and researchers do research. Then they are required by tri-councils—we really agree with this policy—to publish their material. We're trying to go more open access. In order for researchers to get promoted or merit on an annual basis, they want to publish in the best journals. They pay to publish. They provide a publishing fee to the publishers, and then the universities in turn pay a licence to read that same material. It's a good racket.

Mr. David de Burgh Graham: I appreciate that.

Thank you very much for coming.

Thank you, Mr. Chair.

The Chair: I thought you said you wanted three minutes—or three and a half. That was two minutes.

Voices: Oh, oh!

Mr. David de Burgh Graham: I can keep going, if you'd like.

The Chair: No, we're good.

Mr. Jowhari, do you have something to say?

Mr. Majid Jowhari: Yes. I have just one comment that I want to make.

In response to my colleague Mr. Lloyd, I want to make sure that the record is clear. The number of 600 million pages that I referred to was from a response by Ms. Levy to a question raised by Mr. Masse. Ms. Levy's comment—I took this from the blues—was that when you use all the data, on a conservative end, you will end up with 600 million pages that are copied or not paid for.

The 600 million that I made the comment on was the aggregate. You referred to the 385 million as related to K to 12. My 600 million basically—

Mr. Dane Lloyd: Is about everything.

Mr. Majid Jowhari: —is about everything.

Mr. Dane Lloyd: Yes. I'm not defining that—

Mr. Majid Jowhari: No, that's fine. I just wanted to make that clarification.

Mr. Dane Lloyd: I'm not saying you're wrong. There are different groups.

Mr. Majid Jowhari: Thank you.

The Chair: We're still one big happy family.

On that note, I would like to thank our three panellists for coming today. Every time we think we have it all, you give us more. We look forward to continuing this process.

The meeting is adjourned.

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